

Establishment and Transition of Meiji Commercial Law

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I Theme and Methodology of Study

1. The theme of the study is to examine the establishment and transition of Japanese commercial law between 1868 and 1938 in relation to the development of Japanese capitalism, while analyzing the circumstances of each period, and to understand its historical significance.

2. The Japanese Commercial Law was established on March 9, 1899 as the 48th law. Since then a number of major and minor revisions have been made to the law: in 1911, 1938, 1948, 1950, 1962, 1966, 1974, 1981 and in 1990. Serious discussions are presently underway for the next revision. A number of questions immediately spring to mind: Why was this commercial law established and why has it been so frequently revised? What were the factors and backgrounds leading to these revision? What is the historical significance and distinction of the law? Examining these questions means to clarify the historical significance and distinction of the law, which is the target in the study of legal interpretation. It has thus great significance in the target of legal interpretation. But as in the study of other existing laws, mainstream study of commercial law has always focused on its legal interpretation, which changed little until today. However, the necessity and the importance of studying laws from a sociological and historical perspective in the study of legal interpretation is widely recognized today from the stand-points of “balance of interests doctrine”. This is an attempt at a sociological and historical study in the area of commercial law.

Commercial law has been generally developed and revised in line with the historical

development and transition of any given society. The legal system should therefore be analyzed in relation to each stage in the historical development of that society. The society has undergone a historical process of development and transition and has reached a certain stage. This stage is currently the capitalist society in which we live today. This study examines in chronological order the historical inter-relation between the development and transition of Japanese capitalism and the establishment and revision of the commercial law. The study draws on historical evidence and is carried out from the following perspective: How has the Japanese commercial law been established, developed and revised in the process of the development and transition of Japanese capitalism? Conversely, what kind of function and effect did the commercial law have, in the process of its establishment and revisions, on the Japanese economy and enterprise?

3. The sociological and historical study of the commercial law at each stage in the development of Japanese capitalism can be carried out from various angles. Here, the study is conducted from two angles. First, what was the reasoning and backgrounds leading to the establishment and revision of the commercial law and what was the purpose of establishment and revision? (Objective definition of meanings and objectives of legislation and reasons for that legislation). Second, what kind of functions did the established and then revised commercial law have in reality? (Analysis of objective and realistic functions of the commercial law). This study focuses on an objective definition of the meanings and objects of the commercial law and the reasons for the law's establishment and revision. It also provided an analysis of the law's objects and realistic functions. The study aims to analyze and examine the significance of the commercial law from a sociological and historical perspective in relation to the overall social structure at each stage of capitalism in Japan leading up to the present day, with an awareness that to do so will lead us to an understanding of modern Japanese society.

II Formation of Industrial Capital and the Meiji Commercial Law

1. Following the examples of modern laws in advanced capitalistic nations such as

France and Germany, Japan rapidly organized its own laws during the Meiji period, a time when the nation was also quickly building industrial capital. One of the laws established in this period was the Japanese Commercial Law. This represented the first modern, systematic code in Japan and was generally called the Meiji Commercial Law. The factors leading to the law's establishment were varied and had different aspects, according to the period. Many twists and turns were made before the commercial law was finally put together as the Meiji Commercial Law.

The Meiji Government was encountering external pressure from the advanced capitalist nations of Europe. On the domestic front, it had to confront an array of anti-revolutionary forces as well as revolutionary peasants and civilians. While in conflict with these internal and external forces, the government had to build a modern state and establish, maintain and develop its control over that state. To do this the government first abolished the various feudalistic devices then in place, such as *bakuhatsu*, the system by which the shogun and daimyo governed extensive territories. Abolishing these systems was necessary to pave the way for the development of a capitalistic economy in the future. Then, from the advanced nations of Europe, the Meiji Government introduced modern industrial technology and an economic system to Japan, a nation where no industrial capital as defined by Western nations had previously existed. In strongly promoting these developments the government exercised state power. More specifically, the process was achieved by means which suited the circumstances of the time, such as lending out capital for industry, and building public munitions factories and public demonstration factories and then selling them to the private sector. The introduction of corporate law and negotiable instruments law made a particularly great contribution to the formation of capital and credit in Japan.

Each time the government stipulated matters necessary in order to respond to the urgent issue of setting up capitalism, it established an independent law. These were makeshift laws, and fragmented, incoherent and transitional in content. With such laws, the government would not be able to achieve its goal of amending the unfair treaty. Thus, it lost little time before it began to compile a modern, systematic code, even while it established

independent, makeshift laws. In April 1890, a commercial code based on Western examples was promulgated, and was set to go into effect on January 1 the following year. This is generally referred to as the Old Commercial Law and was the first modern, systematic code in Japan.

Despite the enormous volume of the Old Commercial Code, the period set between the code's promulgation to its enforcement was only eight months. The date for the enforcement was set for January 1, 1891, two years before the enforcement of the Civil law. The contents of the code were progressive and westernized and greatly differed from the reality of Japan at that time. It was therefore natural that objections should arise to such a hasty enforcement. After a heated dispute, it was stipulated in the Law Pertaining to the period for the Commercial Law and its Enforcement Law, passed on December 23, 1890, that the enforcement of the Commercial Code would be postponed until January 1, 1893, the same day as the enforcement of the Civil Law. In June 1892, the enforcement of the Commercial Law was again postponed until December 31 in order to make further revisions to the code. Following their enforcement, the government made serious efforts to launch in the Civil Law and Commercial Laws. A revised commercial law was passed on March 9, 1899 and was set to go into effect from June 10 of the same year. This is what is usually termed the New Commercial Law or Meiji Commercial Law. For the most part, it resembled German commercial law, with the exception that it included the negotiable instruments law.

III Formation of Primary Monopolistic Capital and the 1911 Revision in the Commercial Law

1. Victory in the Russo-Japanese War that began in 1894 and the profits acquired from that victory, including the huge compensation payments, the acquisition of vast new territories and expansion of markets in China, prompted a remarkable development in capitalism in post-war Japan, which led to the establishment of industrial capital. Along with this formation of industrial capital came the establishment of Meiji Commercial Law.

The law provided a modern, legal foundation and framework for the corporate system and gave legal assistance to the rise of corporations. But Japan was quickly forced to form monopolistic capital at about the same time it formed industrial capital. This was because Japan was surrounded by advanced capitalist nations which, by that time, had already reached the stage of imperialism. Japan thus underwent a number of crises. This process saw repeated large-scale mergers and breaking up of corporations, increasingly concentrated production and capital, the formation of cartels and the coming into existence of large and monopolistic banks. During this stage in the development of capitalism, imperfections were found in the Meiji Commercial Law and a revision was demanded. A major revision in terms of quantity was made in 1911, with almost 200 articles revised. However, in terms of substance, the 1911 revision was made only to correct the imperfections in the law. It was not meant to establish a new system but was limited to correcting and supplementing words and phrases of existing stipulations in the Meiji Commercial Law. Nevertheless it remains clear that the revision was carried out in response to the various economic requirements of that time.

2. On May 3, 1911, the revised commercial law was promulgated, going into effect from October 1 of the same year. The revision was designed to correct imperfections and faults in the corporate law which had become apparent in the transition from Japanese capitalism to the formation of primary monopolistic capital during the Sino-Japanese and Russo-Japanese wars. The revision was also aimed at providing a legal framework for the further development of capitalism in Japan. After 1911, the law was not to be revised until 1938. The commercial law, as revised in 1911, was to serve as the basic private law for corporations until then, and is thus considered to have important implications.

IV The Shift to a Wartime Economy and the 1938 Revision in the Commercial Law

1. After the makeshift 1911 revision, the commercial law went unrevised for more than 25 years. In contrast, Japanese capitalism underwent major changes in line with the global social and economic changes that took place during that period. Backwardness meant that

was reaching a nadir in terms of its accumulation. The spread of the joint-stock corporation was therefore promoted to help accumulate capital through concentration. This heralded the beginning of modern industries based on a relatively sophisticated composition of capital, in contrast to the law, primitive accumulation of capital which had previously described capitalism in Japan. Japanese capitalism had come to a standstill soon after the Russo-Japanese War, which meant that the depressed economy would continue. The outbreak of World War One in 1914 helped Japan get out of this situation. The war was a blessing for the Japanese economy and the nation's capitalism made remarkable development. But Japanese capitalism was to endure a post-war crisis beginning from 1920, a financial crisis beginning from 1927, and Showa crisis, which began in 1930. Towards the end of the 1930's Japan began to promote colonization and the formation of a yen block in response to the other world economic blocks being formed. At home, Japan was promoting a shift in its industrial structure to heavy and chemical industries as well as the organization of capital. When Japan entered the Showa period, militarization of the whole nation was strongly promoted. With these radical economic changes in the background, repeated calls came for a revision in the commercial law, which served as the basic corporate law. This finally resulted in a major revision in the law and the establishment of a Limited Company Law in April 1938.

2. The revised commercial law, the Enforcement Law and the Limited Company Law were passed on April 5, 1938 and went into effect on January 1, 1940. The revision was primarily meant to correct the imperfections in the law discovered upon reflection on the financial crisis and the Showa Crisis. It emphasized the protection of creditors and shareholders and aimed to modify and reinforce corporate management through organizational rationalization in order to regain the public's trust in the corporate system. The revision also aimed to develop a diversified and comprehensive method of procuring capital and to simplify the circulation of shares in order to secure the corporate capital which was increasingly in need following the outbreak of the Sino-Japanese conflict. Finally, the revision was aimed at organizing a law relevant to the increasing move towards corporate trust, in order to ensure the continued existence of corporation. But the

importance of the commercial law was degraded somewhat when Japan embarked on a wartime economic system and legislation which created an increasingly controlled economy. This decline in importance was unavoidable. Nevertheless, it meant that expectations had still been placed on the basic role of commercial law as it related to corporations up to that point. But when Japan started the Pacific War in 1941, a succession of special laws were promulgated, such as the Munitions Company Law, and application of the commercial law declined. For some time after that, the government did not find time to revise the law, and left it virtually unrevised until 1950. Hence, the 1938 revision was considered significant.

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